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June 28, 2006

Senator Barbara Boxer
United States Congress
Washington D.C. 20515

RE: U.S. – Oman Free Trade Agreement, *Oppose*

As Chair of the California Senate Subcommittee on International Trade Policy and State Legislation, I am writing to express opposition to the U.S. – Oman Free Trade Agreement (FTA) and to request your “no” vote when this agreement comes before you in Congress. I am concerned that the investment, services, and procurement provisions of this FTA could pose significant limits on state lawmaking authority. While California has a clear economic interest in international trade, I firmly believe that the benefits of increased trade should not come at the cost of our constitutional standards.

Investment

I am particularly troubled by the way in which the Oman FTA replicates NAFTA’s flawed foreign investor protections, a system which grants foreign investors the power to circumvent domestic courts by directly challenging governmental regulations and demanding government compensation before international tribunals. With California laws continuing to be challenged in NAFTA dispute tribunals, we have cause for alarm. Consider the ongoing NAFTA Chapter 11 arbitration claim filed by *Glamis Gold Ltd.* against California’s environmental gold mining regulations. The Oman FTA investment provisions expand the ability of private foreign investors to bring regulatory takings claims. Such investor-state challenges to state laws and regulations impose significant demands on the time and resources of state agencies. Moreover, we are experiencing that even the threat of a challenge combined with the knowledge among state governments of the financial demands associated with defending a challenge, is often enough to *chill* government actions.

Services

I recognize the limited efforts undertaken by the U.S. Trade Representative’s (USTR) office to grandfather in existing state and local measures that conflict with the services provisions of the FTA. However, it should be noted that the services language within the Oman FTA remains broad and ambiguous. The Oman language suggests that a wide range of public protections, including any public health law, consumer safety standard or environmental regulation that has

an indirect effect on trade in services, could be considered barriers to trade. Further, the Oman agreement does not contain an explicit carve-out for important public services. Public services provided on a commercial basis or in competition with private providers are generally subject to the FTA rules, unless specifically exempted. Considering the difficulties that developed under California's attempt to deregulate energy services, any rules that could inadvertently place pressure on governments to deregulate and privatize public services should be approached with caution.

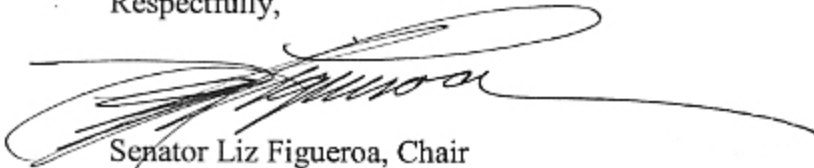
Procurement

Although state and local government procurement policies are not covered by the Oman FTA, many legislators remain troubled by the process used to bind states to procurement agreements. As the California Legislature creates and the Governor implements the procurement laws of this state, any consultation process undertaken by the USTR to secure approval from states before listing those states on the procurement chapters of trade agreements should not only include discussions with state governors, but should also ensure that state legislatures and the general public are provided with an opportunity to review the agreement's provisions and implications. We are deeply concerned that trade agreement procurement rules could be used to challenge a variety of important state procurement policies, including recycled content requirements and prevailing wage laws. Furthermore, while the Peru TPA exempts preferences or restrictions associated with programs promoting businesses owned by minorities or women, the Oman FTA does not. It is inappropriate for procurement rules to so narrowly restrict the authority of governments to choose how to spend their tax dollars, particularly considering the undemocratic nature of the process used to bind states to these rules.

For these reasons, I urge you to vote "no" on the Oman FTA and send a signal to the administration that future trade agreements based on the flawed NAFTA/CAFTA models are unacceptable.

Thank you for your attention to these concerns. I look forward to working together towards the creation of trade and investment agreements that preserve the efficacy and integrity of our long standing democratic institutions.

Respectfully,

A handwritten signature in black ink, appearing to read "Liz Figueroa", with a large, sweeping flourish extending to the right.

Senator Liz Figueroa, Chair
Senate Subcommittee on International Trade Policy and State Legislation